IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

OP.No. 26660 of 2001(W)

PETITIONER:

P.VISWAMITHRAN,
JUNIOR SUPERINTENDENT (RETIRED),
MITHRA BHAVAN
KAKKODE (PO)
AICKARAKONAM
PUNALUR.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:
----

1. **THE PRINCIPAL,**
   S.N.COLLEGE, VARKALA,
   THIRUVANANTHAPURAM.

2. **DEPUTY DIRECTOR OF COLELGIATE EDUCATION,**
   SOUTH ZONE,
   KOLLAM.

3. **DIRECTOR OF COLLEGIATE EDUCATION,**
   VIKAS BHAVAN,
   THIRUVANANTHAPURAM

4. **THE MANAGER,**
   SREE NARAYANA COLELGES,
   KOLLAM.

5. **STATE OF KERALA REPRESENTED BY THE**
   SECRETARY TO GOVERNMENT,
   DEPARTMENT OF HIGHER EDUCATION,
   GOVERNMENT SECRETARIATE,
   THIRUVANANTHAPURAM.

BY ADV. SRI.A.N.RAJAN BABU FOR R4
GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.26660/2001

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF PETITION DATED 30.11.98 SUBMITTED BEFORE THE MANAGER, S.N.COLELGES, KOLLAM.

EXHIBIT P2: TRUE COPY OF ORDER DATED 11.01.1999 ISSUED BY THE MANAGER.

EXHIBIT P3: TRUE COPY OF ORDER NO.1751/96/219 DATED 04.05.99 ISSUED BY THE MANAGER.

EXHIBIT P4: TRUE COPY OF APPEAL DATED 1.3.99 SUBMITTED BEFORE THE 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF REPRESENTATION DATED 10.8.99 SUBMITTED BEFORE THE MANAGER.

EXHIBIT P6: TRUE COPY OF REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF REPRESENTATION DATED 28.3.2000 SUBMITTED BEFORE THE 2ND RESPONDENT.

EXHIBIT P8: TRUE COPY OF LETTER DATED 3.4.2001 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P9: TRUE CPY OF THE PROMOTIONORDER NO.2/SNT/3477 DATED 21.2.83.

EXHIBIT P10: TRUE COPY OF THE REPRESENTATION DATED 4.8.97 BEFORE THE MANAGER.

EXHIBIT P11: TRUE COPY OF THE 2ND REPRESENTATION DATED 4.8.97 TO THE MANAGER.

EXHIBIT P12: TRUE COPY OF THE RELEVANT PAGES OF THE SENIORITY LIST DATED 31.7.98 OF THE NON-TEACHING STAFF OF S.N.COLLEGES

EXHIBITS OF R4

EXHIBIT R4(a): TRUE COPY OF THE ORDER NO.B.1751/96 DATEED 31.5.97 OF THE MANAGER.

EXHIBIT R4(b): TRUE COPY OF THE LETTER NO.G1/407/06-07 DATED 3.7.2006 SENT BY THE 1ST RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMAN, J.

O.P. NO. 26660/2001

DATED THIS, THE 15TH DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner retired on superannuation on 31.1.2000, while he was working as a Junior Superintendent in the Sree Narayana College, Varkala, under the management of the 4th respondent. He entered service in 1965 and was promoted to the post of L.D. Clerk in 1971 and thereafter as U.D. Clerk in 1983. He became a Head Accountant on 25.9.1984. While working as Head Accountant, he was placed under suspension on a disciplinary action initiated by the management. He continued to be under suspension from 13.7.1989 to 22.2.1990. The disciplinary action culminated in his compulsory retirement with effect from 21.1.1991. The order of punishment was confirmed in appeal which was challenged in C.R.P. 1256/1992 before this Court. This Court, by order dated 7th November, 1996, allowed the civil revision petition, the operative portion of which is as follows:

> "In view of the above discussions, it is clear that the disciplinary proceedings taken against the petitioner are not sustainable. Therefore, we allow the C.R.P. and set aside the Tribunal's judgment confirming the disciplinary action. The punishment

> imposed on the petitioner is hereby set aside. This will not prejudice the management from taking fresh action against the petitioner for the alleged failure of supervisory functions, dereliction of duty, negligence or any other misconducts as it may deem fit with specific allegations. Without prejudice to the above right of the Management, the disciplinary proceedings which culminated with the order of compulsory retirement is hereby set aside. Petitioner is entitled to reinstatement with all consequential benefits. The C.R.P. is allowed. However, on the facts and circumstances of the case, the parties should bear their costs."

2. Petitioner was thereafter reinstated in service with effect from 23.12.1996. Subsequently, he was also promoted to the post of Junior Superintendent with effect from 28.1.1997. He was served with a fresh memo of charges on 8.4.1997 and after due enquiry, he was imposed a penalty of barring promotion for a period of three years or till his retirement, whichever is earlier. The order imposing penalty is Ext.R4(a) which is produced along with the counter affidavit. Petitioner accepted the penalty imposed on him as there was no challenge against the same and retired from service on 31.1.2000. This writ petition is filed seeking various reliefs which, according to the petitioner, he was entitled to while he was in service. Though in the writ petition he claimed full salary during the period of suspension, as he was subsequently reinstated in service, he claims

promotion as Junior Superintendent with effect from 4.11.1991 the date on which his junior was promoted to that post and as also Senior Superintendent with effect from 1.2.1997 in the retirement vacancy of Vidyadharan.

3. Learned counsel Sri. Thampan, however, submitted that he is not pressing his claim for salary during the period of suspension, however, maintained to claim the other two reliefs namely that he is entitled to be promoted as Junior Superintendent with effect from 4.11.1991 and as Senior Superintendent with effect from 1.2.1997, the date on which the vacancy arose in the said post.

4. I shall now consider the second claim for promotion as Senior Superintendent which is seriously disputed by the respondent management. Even though the penalty order was issued on 31.5.1997 it bars future promotion for a period of three years. It is the contention of the writ petitioner that the post of Senior Superintendent arose with effect from 1.2.1997 – a date prior to the imposition of the penalty and therefore, he could not be denied the due promotion as the penalty order has only prospective effect. In answer to this, learned counsel for the respondent submits that though a vacancy arose on 1.2.1997 the said vacancy was filled only with effect from 24.9.1997, much after the imposition of the

penalty on the petitioner effective from 31.5.1997. It was also submitted that there is no hard and fast rule that at the moment a vacancy arises the same should be filled up on the same day. On the other hand, even if a vacancy arises necessarily, the management will have to undertake promotional exercises and promote a person duly eligible. In this case, though the vacancy arose on 1.2.1997 within a period of six months the same was filled up. As such there is no undue delay in the matter of filling up of the post. On the date on which the post was filled up admittedly the penalty order has come into effect barring future promotion to the petitioner. As such he has no valid claim to the post of Senior Superintendent. It is also submitted that the petitioner did not seek to include such a prayer in the writ petition as was filed originally but only incorporated such a prayer subsequently by way of an amendment and that Ext.P4 to P7 produced does not refer to any such claim for promotion to the post of Senior Superintendent. Even though the petitioner has, during the course of argument, produced some of the representations by filing I.A.15243/2006, the learned counsel appearing for the respondent would seriously dispute the receipt of the same by the management.

5. Heard both sides. As far as the post of Senior Superintendent is concerned, though a vacancy arose on 1.2.1997 the same was filled up only

on 24.9.1997 and it cannot be said that there was any undue delay in the matter of filling up of the said post. It cannot be held to be vindictive at all because if as a matter of fact, there was any such motive, the management could have passed the order of penalty even much earlier, because the action of the management in filling up of the post of Senior Superintendent cannot be said to be actuated by any malafides. It is only a normal delay in filling up of the post and on the date on which the post was filled up, admittedly, the petitioner was already suffering penalty imposed on him barring future promotion and as such, he cannot have any legitimate claim for the post of Senior Superintendent, leave alone the question as to whether a representation was made or not.

6. However, the claim of the petitioner to the post of Junior Superintendent with effect from 4.11.1991 appears to be reasonable and legitimate. As per the Division Bench decision of this Court in C.R.P. 1256/1992 the management was directed to reinstate the petitioner with all consequential benefits. Therefore, the delay on the part of the respondent in giving promotion to the petitioner is no reason to deny him the due promotion as he would have otherwise entitled to. There is no dispute that Ravindran, his junior was promoted to the post of Junior Superintendent with effect from 4.11.1991 and had the disciplinary proceedings were not

pending, necessarily, it was the petitioner who would have been entitled to be promoted to that vacancy. Since the disciplinary action culminated in compulsory retirement was set aside by this court and having directed to give all consequential benefits, necessarily, petitioner is entitled to be promoted as Junior Superintendent at least from 4.11.1991, the date on which his junior was promoted.

7. Accordingly, I declare that the petitioner is entitled to be promoted as Junior Superintendent with effect from 4.11.1991 and he is also entitled for all monetary benefits attached thereto from that date. The difference in the emoluments less what has already been paid to him shall be calculated and paid. As a consequence thereof, the last drawn salary of the petitioner shall be refixed and his pensionary benefits shall also be paid accordingly.

8. In the result, the writ petition is allowed in part, directing the second respondent herein to pass consequential orders based on the declaration made in this judgment that the petitioner is entitled to be promoted as Junior Superintendent with effect from 4.11.1991 and calculate the difference in emoluments payable to him as also the pensionary benefits as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Petitioner shall produce a copy of this judgment along with the copy of the writ petition for information and compliance.

R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
==========

O.P. NO. 26660/2001
==========

J U D G M E N T

15.11.2006.